

TAB 6

INSTRUCTIONS FOR USE GENERAL PROVISIONS FOR COMMERCIAL ITEMS

This Tab contains a policy statement and definition of a Commercial Item, as well as instructions for conducting a Market Survey to determine if a particular purchase can be made as a Commercial Item. If the decision is that the item is a Commercial Item, the Buyer or SA must complete the Commercial Item Determination and get Management Concurrence. This Determination shall be placed in the Subcontract File. The purchase should then be made using the General Provisions for Commercial Items found in this Tab.

If a determination has been made that an on-Site Service or Construction or Demolition action can be purchased as a Commercial Item, then the General Provisions found at this Tab must be used, but appropriate Special Provisions for Services or Construction and Demolition must also be included.

GENERAL PROVISIONS (GPs) FOR
COMMERCIAL ITEMS

TABLE OF CONTENTS

<u>Section</u>	<u>Clause Title</u>
GP.1	Definitions
GP.2	Inspection/Acceptance
GP.3	Unclassified Controlled Nuclear Information (UCNI)
GP.4	Assignment
GP.5	Changes
GP.6	Disputes
GP.7	Excusable Delays
GP.8	Invoice
GP.9	Payment
GP.10	Patent Indemnity
GP.11	Risk of Loss
GP.12	Termination for Contractor's Convenience
GP.13	Termination for Cause
GP.14	Title
GP.15	Warranty
GP.16	Suspect Counterfeit Items
GP.17	Other Compliances
GP.18	Representations and Certifications
GP.19	Price-Anderson Amendment Act
GP.20	Transportation Requirements for General Deliveries to Rocky Flats Environmental Technology Site
GP.21	Litigation Support
GP.22	Order of Precedence
GP.23	FAR and DEAR Flowdown Provisions

GENERAL PROVISIONS (GPs) FOR COMMERCIAL ITEMS

GP.1 DEFINITIONS

Unless specifically stated elsewhere in this Subcontract, as used throughout this Subcontract, the following terms shall have the meaning set forth below:

1. "Government" means the United States of America
2. "DOE" means the United States Department of Energy or any duly authorized representative thereof, including the Manager, Rocky Flats Field Office, DOE
3. "Contractor" means the party issuing this Subcontract.
4. "Subcontractor" means the party to whom this subcontract is awarded.
5. "Days" means calendar days.
6. "Site" means the Rocky Flats Environmental Technology Site (RFETS) or other RFETS leased facilities.

GP.2 INSPECTION/ACCEPTANCE

The Subcontractor shall only tender for acceptance those items that conform to the requirements of this subcontract. The Contractor reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Contractor may require repair or replacement of nonconforming supplies or re-performance of nonconforming services at no increase in subcontract price. The Contractor must exercise its post-acceptance rights – (1) Within a reasonable time after the defect was discovered or should have been discovered; and (2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item. Subcontractor shall bear and pay all expenses related to the nonconforming items, including without limitation costs of correction, return, or replacement, and indemnification of any fines or penalties assessed against Contractor.

GP.3 UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION (UCNI)

Documents originated by Subcontractor or furnished by the Contractor to the Subcontractor, in connection with this Subcontract, may contain Unclassified Controlled Nuclear Information (UCNI) as determined pursuant to Section 148 of the Atomic Energy Act of 1954, as amended. The Subcontractor shall be responsible for protecting such information from unauthorized dissemination in accordance with the requirements of 10 CFR 1017.17. Such protections include marking the UCNI information appropriately and complying with the following requirements:

1. Protecting the information from unauthorized dissemination and access to it. Matter that is not in use shall be stored in a secured container, e.g., locked desk, file cabinet, or in a location where access is limited, such as a locked or guarded office or controlled access facility.
2. Limiting reproduction of UCNI to the minimum extent necessary and, with regard to reproduced information, marking and protecting it in the same manner as the original document.
3. Packaging the UCNI that is to be transmitted in such a manner as to prevent disclosing that the package may contain UCNI.
4. Destroying the information in accordance with 10 CFR 1017.17.

UCNI shall not be electronically sent off-Site via e-mail without Contractor's prior written approval. Contractor-approved encryption methods shall be used. Users of Site e-mail are only authorized to transmit UCNI without Contractor-approved encryption when sending to individuals whose computers are connected to the Contractor UCNI-certified network and who possess a need-to-know the specific UCNI information.

GP.4 ASSIGNMENT

Neither this Subcontract/Purchase Order nor any interest therein, money due, nor claim thereunder, including claims for money due or accounts payable, shall be assigned or transferred by the Subcontractor except as expressly authorized in writing by the Contractor. No assignment agreement shall modify or negate the Contractor's rights under this Subcontract to withhold or set-off funds due the Subcontractor.

This Subcontract, or any part thereof, and all rights of the Contractor hereunder may be assigned and transferred to the Department of Energy or any designee of the Contractor or Department of Energy, provided that written notice thereof is given to the Subcontractor.

GP.5 CHANGES

The Contractor may at any time, by written Change Order, make changes within the general scope of this Subcontract. The Contractor may also make changes outside the general scope of this Subcontract, provided the Subcontractor agrees, in writing, with the changes made. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this Subcontract, the Contractor shall make an equitable adjustment in the Subcontract price, the delivery schedule, or both. The Subcontractor must assert its right to an adjustment under this Provision within 5 days from the date of receipt of the Change Order.

No changes in the performance of this Subcontract/Purchase Order, including cost or schedule changes, shall be made except upon written order of the Contractor. Any claim made by Subcontractor for adjustment to the Subcontract/Purchase Order price, performance schedule, or both, shall be deemed waived unless asserted in writing no later than 7 days from Subcontractor's first knowledge of the circumstances giving rise to a potential for change. Under no circumstances shall any pending claim or dispute excuse Subcontractor from proceeding with its performance under this Subcontract/Purchase Order.

Nothing in this provision shall excuse the Subcontractor from proceeding with the Subcontract as changed by the Contractor. Failure to proceed with the changes, as directed, will constitute a breach of this Subcontract.

GP.6 DISPUTES

In the event that the parties cannot through reasoned negotiations, reach agreement on any issue arising out of this Subcontract, the issue will be considered a dispute and shall be resolved in accordance with the following:

1. If efforts at resolution through good faith discussions and/or negotiations fail to resolve the dispute, the parties agree that before taking any other action, they will consider the use of Alternate Dispute Resolution (ADR). In the event that non-binding mediation or arbitration is agreed upon, the site of the proceedings shall be Denver, Colorado, unless otherwise agreed in writing by the parties. The rules for mediation or arbitration and the selection of the arbitrator shall be determined by mutual agreement of the parties. The mediator or arbitrator shall allocate cost, except that there shall be no pre-decisional interest costs, and each party shall bear its discretionary costs.
2. In the event ADR fails or is not used, primary jurisdiction for the resolution of any claim arising under this Subcontract shall reside in the United States Federal District Court with venue in the United States District Court for the District of Colorado in Denver, Colorado. If the requirements for jurisdiction in the United States District Court are not met, the litigation shall be brought in a Court of competent jurisdiction in Jefferson County, Colorado. This Subcontract shall be enforced and interpreted, irrespective of the place of performance, in accordance with the federal law of government contracts. To the extent that federal law is not dispositive of an issue, the laws of the State of Colorado shall be applied.

Unless otherwise directed in writing by the Contractor, Subcontractor shall proceed diligently with the performance of the Subcontract pending final resolution of the Dispute.

GP.7 EXCUSABLE DELAYS

The Subcontractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Subcontractor and without its fault or negligence, such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Subcontractor shall notify the Contractor as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contractor of the cessation of such occurrence. All notices to Contractor hereunder shall be provided within five (5) days after identification of the condition by Subcontractor.

GP.8 INVOICE

The Subcontractor shall submit an original invoice and one copy (or electronic invoice, if authorized) to the address designated in the Subcontract/Purchase Order to receive invoices. An invoice must include – (1) Name and address of the Subcontractor; (2) Invoice date; (3) Subcontract/Purchase Order number and Subcontract/Purchase Order line item number; (4) Description, quantity, unit of measure, unit prices and extended price of the items delivered; (5) Shipping number and date of shipment including the bill of lading number and weights of shipment if shipped on Government bill of lading; (6) Terms of any prompt payment discount offered; (7) Name and address of official to whom payment is to be sent; and (8) Name, title, and phone number of person to be notified in event of defective invoice. Subcontractors are encouraged to assign an identification number to each invoice.

GP.9 PAYMENT

Payment shall be made for items accepted by the Contractor that have been delivered to the delivery destinations set forth in the Subcontract. In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

GP.10 PATENT INDEMNITY

The Subcontractor shall indemnify the Contractor and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this subcontract, provided the Subcontractor is reasonably notified of such claims and proceedings.

GP.11 RISK OF LOSS

Unless the Subcontract specifically provides otherwise, risk or loss or damage to the supplies provided under this Subcontract shall remain with the Subcontractor until, and shall pass to the Contractor and/or Government upon: (1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or (2) Delivery of the supplies to the Contractor at the destination specified in the Subcontract, if transportation is f.o.b. destination.

GP.12 TERMINATION FOR THE CONTRACTOR'S CONVENIENCE

The Contractor reserves the right to terminate this Subcontract, or any part hereof, for its sole convenience. In the event of such termination, the Subcontractor shall immediately stop the work so terminated and shall immediately cause any and all of its affected suppliers and subcontractors to cease work. Subject to the terms of this Subcontract, the Subcontractor shall be paid a percentage of the subcontract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Subcontractor can demonstrate to the satisfaction of the Contractor using its standard record keeping system, have resulted from the termination. The Subcontractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. The Contractor, or an authorized representative of the Contractor, shall have access to and right to examine any of Subcontractors' directly pertinent records involving transactions related to the terminated work. The Subcontractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

GP.13 TERMINATION FOR CAUSE

The Contractor may terminate this Subcontract, or any part hereof, for cause in the event of any default by the Subcontractor, or if the Subcontractor fails to comply with any Subcontract terms and conditions, or fails to provide the Contractor, upon request, with adequate assurance of future performance. In the event of termination for cause, the Contractor shall not be liable to the Subcontractor for any amount for supplies or services not accepted by Contractor, and the Subcontractor shall be liable to the Contractor for any and all rights and remedies provided by law. If it is determined that the Contractor improperly terminated this subcontract for default, such termination shall be deemed a termination for convenience.

GP.14 TITLE

Unless specified elsewhere in this subcontract, title to items furnished under this subcontract shall pass to the Contractor and/or the Government upon acceptance; regardless of when or where the Contractor takes physical possession.

GP.15 WARRANTY

The Subcontractor warrants that the goods supplied comply with the specifications and other data identified or provided by Contractor in connection with the Subcontract/Purchase Order, are merchantable, of highest quality, free from defects, whether patent or latent, in design, material and workmanship and suitable for the particular use for which the items are purchased. Subcontractor further warrants that the goods are free and clear of all liens and encumbrances, and that Subcontractor has secured Contractor's right to own, sell or use goods delivered under this Subcontract/Purchase Order. Such warranty, together with service warranties, guarantees and other express and implied warranties, shall run in favor of Contractor, its successors, assigns and customers, and shall survive any inspection, delivery or payment. Subcontractor shall be responsible for all damages and costs incurred by Contractor arising out of or in connection with any breach of warranty. For purposes of this Subcontract/Purchase Order, goods shall include any documentation, such as quality control or test records or certificates of compliance or conformance, that may be specified or are customarily furnished in the trade.

GP.16 SUSPECT COUNTERFEIT ITEMS

The Subcontractor warrants that all items provided to the Contractor shall be new and unused unless otherwise specified in writing by the Contractor. Subcontractor further warrants that all items used by the Subcontractor during the performance of work at the Rocky Flats Environmental Technology Site include all genuine, original, and new components, or are otherwise suitable for the intended purpose. Furthermore, the Subcontractor shall indemnify the Contractor, its agents, and third parties for any financial loss, injury, or property damage resulting directly or indirectly from material, components, or parts that are not genuine, original, and unused, or not otherwise suitable for the intended purpose. This includes, but is not limited to, materials that are defective, suspect, or counterfeit; materials that have been provided under false pretenses; and materials or items that are materially damaged, deteriorated, degraded, or result in product failure.

Types of material, parts, and components known to have been misrepresented include (but are not limited to) fasteners; hoisting, rigging, and lifting equipment; cranes; hoists; valves; pipe and fittings; electrical equipment and devices; plate, bar, shapes, channel members, and other structural items; and welding rod and electrodes. The Subcontractor's warranty also extends to labels and/or trademarks or logos affixed, or designed to be affixed, to items supplied or delivered to the Contractor. In addition, because falsification of information or documentation may constitute criminal conduct, the Contractor may reject and retain such information or items, at no cost, and identify, segregate, and report such information or activities to cognizant Department of Energy officials.

GP.17 OTHER COMPLIANCES

The Subcontractor shall comply with all applicable Federal, state, and local laws, executive orders, rules and regulations applicable to its performance under this Subcontract.

GP.18 REPRESENTATIONS AND CERTIFICATIONS

The Representations and Certifications completed as part of the solicitation and offer leading to award of this Subcontract, and all updates thereto, are hereby incorporated into this Subcontract by reference.

GP.19 PRICE-ANDERSON AMENDMENTS ACT

The Department of Energy has promulgated Nuclear Safety Rules in implementation of the Price-Anderson Amendments Act of 1988 (PAAA), Public Law 100-408, August 20, 1988. These rules govern the conduct of persons involved DOE nuclear activities, and are designed to achieve compliance with DOE nuclear safety requirements. Violation of the applicable rules may provide a basis for the assessment of civil and criminal penalties under the PAAA. Nuclear Safety Rules subject to enforcement under the PAAA are, 10 CFR 820, Procedural Rules for DOE Nuclear Activities, 10 CFR 830, Nuclear Safety Management, Subpart A, Quality Assurance Requirements, and 10 CFR 835, Occupational Radiation Protection. This Subcontract is subject to the requirements of the above rules.

The Subcontractor shall indemnify Contractor for any civil penalties levied against Contractor pursuant to the PAAA for any violations of applicable nuclear-safety related rules, regulations, or orders arising out of or in connection with Subcontractor's or its lower-tier subcontractors' and suppliers' performance of this Subcontract.

GP.20 TRANSPORTATION REQUIREMENTS FOR GENERAL DELIVERIES TO ROCKY FLATS ENVIRONMENTAL TECHNOLOGY SITE

General

Motor Vehicles (vehicles) delivering commodities to the Site shall comply with the Federal Motor Carrier Safety Regulations (49 CFR Parts 350-399) and applicable tribal, State, and local regulations not otherwise preempted by Department of Transportation (DOT) regulations. Vehicles entering the Site shall comply with Site traffic controls and posted speed limits; failure to do so may result in denial of access to the Site. In the event of a security or emergency response occurring in the vicinity of the delivery vehicle, pull to the side of the road, stop the vehicle and yield to emergency response vehicles. Vehicle operators must have a valid state or international driver's license in their possession. Site Access will only be permitted for those personnel determined by Contractor to have valid official business on Site. All persons permitted to enter the Site must wear a DOE Standard Badge or Rocky Flats Visitor Badge while on Site.

Point of Entrance and Instructions

Vehicles must enter the Site at Highway 93, West Gate Entrance and, after authorization to enter the Site is provided, instructions will be given to proceed directly to Building 130, for unloading, receipt, and inspection. If delivery is specified for a location other than Building 130, instructions will be provided at Building 130.

Searches

All vehicles entering or operating on Site are subject to search at any time. Hand carried items are subject to search as well. This may include a physical search, canine search, and/or technical explosive detection testing.

Site Access by Non-US Citizens

Site access by persons who are not US Citizens requires advance approval and a special security plan. The only exception is that non-US Citizens possessing valid US Immigration and Naturalization identification permitting work in the US (Resident Alien ID, "Green Card," Work Permit) may be badged to make deliveries to the Building 130 Receiving Dock only.

Photo Identification

All persons entering the Site must have official photo identification in their possession (valid state driver's license, military identification card, valid state identification card, US Immigration and Naturalization Foreign National Registration card, or passport) and must obtain a visitor badge or a Department of Energy (DOE) Standard Badge prior to entering the Site. Visitor Badges and DOE Standard Badges are issued at the Badging Office located in Building 60 outside the west entrance to the Site. Badging Office hours are 6:30 am to 4:00 pm, Monday through Thursday, and 6:30 am to 3:00 pm on working alternate Fridays. Drivers of large trucks may obtain their visitor badge at the west entrance guard post (Building 120) rather than the badging office. The visitor is responsible for destroying his/her visitor badge upon leaving the Site at the conclusion of the visit.

Approved Motor Carriers

Subcontractors shall follow routing instructions on the Purchase Order or as provided by the Buyer/Subcontract Administrator (SA). For purchases that are Free-On-Board (FOB) Origin, if the prescribed carrier is unable to provide service, Subcontractor may use a carrier from the Site list of pre-approved motor carriers. The list may be obtained from the Buyer/SA.

Note: as used herein, the terms "Motor carrier" and "Motor vehicle" are the same as the terms defined in 49 CFR Section 390.5.

Insurance

Insurance expense shall not be reimbursed for materials insured against loss, damage or destruction while in transit unless authorized in writing in advance by the Buyer/SA.

Security Requirements

The following shall not be brought onto the Site without the prior approval of the Contractor:

1. Any dangerous weapon, explosive, or other dangerous instrument or material capable of producing substantial injury or damage to persons or property.
2. Illegal drugs, drug paraphernalia, and alcoholic beverages.
3. Other articles prohibited by law.
4. Pets and children.

All photography is controlled on Site. Cameras may not be used without a Rocky Flats Camera Pass.

Special Security Requirements

During periods when enhanced or special additional security requirements are in place, all visitors must be continuously escorted by a Site employee and enhanced visitor searches and random vehicle searches may be initiated at various locations on Site.

High Security Area Prohibited Items

The following privately owned articles shall not be brought into high security areas on the Site unless properly authorized in advance by the Contractor:

1. Recording equipment such as audio, video, optical, or data;
2. Electronic equipment with data exchange port capable of being connected to automated information system equipment (not including personal organizers, calculators, wrist watches and data diaries, provided such equipment is not operated in close proximity to any classified discussions or data processing and remains under the control of the owner);
3. Cellular telephones;
4. Radio frequency transmitting equipment; and
5. Computers and associated media.

Security and Safety Inspections

Inspections conducted in search of prohibited items are conducted at the West Gate upon entrance as well as at random at any point while a vehicle is on-Site. Vehicles found to be transporting prohibited item(s) shall be denied access to the Site. Commercial vehicles are subject to safety and compliance inspections at anytime while on Site. Unsafe vehicles will be removed.

Other Inspections

Hazardous materials shipments and radioactive material shipments will be inspected for damage or loss and evidence of leakage. In addition, radioactive materials shipments will be inspected for external surface contamination and dose rates. If a delivery conveyance is contaminated, the transport vehicle will be detained and the delivering carrier immediately notified so that other potentially contaminated vehicles can be surveyed.

For each shipment of radioactive material, and for gas poisonous by inhalation as defined in 49 CFR 173.115(c), Subcontractor shall notify the Receiving Department at (303) 966-4023 of the dates of the shipment, the expected date of arrival, and any special loading or unloading instructions. Notification must be made not less than 24 hours prior to desired delivery time. Failure to contact the Receiving Department within this timeframe may result in delays or rejection of the delivery, which shall solely be Subcontractor's responsibility.

Hazardous and Radioactive Materials Deliveries to the Site

General Requirements

Subcontractor shall ensure that radioactive and other hazardous materials are packaged and shipped in accordance with applicable requirements found in 49 CFR Part 171, Section 2 and Part 173, Section 1. Hazardous and/or radioactive materials must be blocked and braced in accordance with 49 CFR Part 393, Section 100 (a). The foregoing applies to all radioactive and other hazardous materials entering the Site, whether intended for delivery to the Site or as parts of the vehicle's inventory for delivery to another destination.

Fuel Delivery Requirements

Fuel deliveries include, but are not limited to propane, gasoline, and diesel fuel. While on Site, fuel delivery vehicles containing greater than 400 gallons total fuel inventory (excluding the vehicle fuel tank) shall only be transported over approved routes as provided by the Contractor.

Fuel Offloading/Unloading Requirements

Prior to offloading or unloading, each motor vehicle operator of a fuel delivery vehicle shall ensure that no transient combustibles are within 20 feet of the storage tank, and that there is no smoking, and there is no open flame or other sources of ignition within 20 feet of the storage tank. Engines shall not be operated during fueling or unloading operations unless absolutely necessary to run delivery pumps.

GP.21 LITIGATION SUPPORT

Subcontractor shall provide litigation support to the Government or the Contractor when requested by the Contractor in cases of actual or threatened litigation, regulatory matters, or third-party claims and subject to applicable rules and regulations. Litigation support includes, but is not limited to case preparation assistance, document retrieval, review and reproduction, witness preparation and testimony, expert witness testimony, and assisting Government or Contractor counsel as necessary in response to discovery or other information related activities responsive to any legal proceeding. If a Contractor direction to provide litigation support causes an increase or decrease in the cost of performance of any work under this Subcontract, Subcontractor may request an equitable adjustment pursuant to the Changes clause. Subcontractor shall include the requirements of this Litigation Support clause in all lower-tier subcontracts.

GP.22 ORDER OF PRECEDENCE

Any inconsistency in the terms and conditions of this Subcontract shall be resolved by giving precedence in the following order:

1. Special Provisions; including attachments incorporated therein;
2. General Provisions;
3. Subcontract Signature Page; and
4. Statement of Work/Specification.

GP.23 FAR AND DEAR FLOWDOWN PROVISIONS

The following provisions of the Federal Acquisition Regulation (FAR) and Department of Energy Acquisition Regulation (DEAR) are incorporated herein and shall have the same force and effect as if printed in full text. Where necessary to make the context of the clauses applicable to this Subcontract/Purchase Order, references to the "Contractor" shall mean Subcontractor, references to "subcontract" or "subcontractor" shall mean lower-tier subcontract and lower-tier subcontractor, and references to "Government" and "Contracting Officer" and similar terms shall mean Contractor, except the terms "Government" and "Contracting Officer" do not change when a right, act, authorization, or obligation can be granted or performed only by the Government's duly authorized representative.

Subcontractor may obtain full text of the referenced clause at <http://www.arnet.gov/far/> for FAR clauses and <http://professionals.pr.doe.gov> for DEAR Clauses.

FAR 52.222-26	Equal Opportunity (Feb 1999)
FAR 52.222-35	Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (Apr 1998)
FAR 52.222-36	Affirmative Action for Workers with Disabilities ((Jun 1998)
FAR 52.222-37	Employment Reports on Disabled Veterans and Veterans of the Vietnam Era (Jan 1999)
FAR 52.227-19	Commercial Computer Software—Restricted Rights (Jun 1987)
FAR 52.244-6	Subcontracts for Commercial Items and Commercial Components (Oct 1998)
DEAR 952.204-2	Security (Sep 1997)
DEAR 952.204-70	Classification/Declassification (Sep 1997)
DEAR 952.204-71	Sensitive Foreign Nations Controls (Apr 1984)
DEAR 952.250-70	Nuclear Hazards Indemnity Agreement (Jun 1996)